Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

(Japanese draft transmitted to American Embassy in Tokyo on April 14, 1953 as enclosure to note of same date from Foreign Minister Okazaki to Ambassador Murphy)

OGC Has Reviewed

~~CONFIDENTIAL~~

(Draft)

PROTOCOL TO AMEND ARTICLE XVII OF THE ADMINISTRATIVE AGREEMENT UNDER ARTICLE III OF THE SECURITY TREATY BETWEEN JAPAN AND THE UNITED STATES OF AMERICA

Whereas the "Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces", signed at London on June 19, 1951, is to come into force on , 1953 with respect to the United States of America; and

Whereas Japan desires to conclude with the United States of America an agreement on criminal jurisdiction similar to the corresponding provisions of the said Agreement in accordance with the provisions of Paragraph 1. of Article XVII of the Administrative Agreement, signed at Tokyo on February 28, 1952, under Article III of the Security Treaty between Japan and the United States of America;

Now the Governments of Japan and the United States of America have agreed that the existing provisions of Article XVII of the said Administrative Agreement shall be abrogated and substituted by the following:

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

following provisions:

ARTICLE XVII

1. Subject to the provisions of this Article,

(a) the authorities of Japan shall have jurisdiction over the members of the United States armed forces or of the civilian component thereof and their dependents with respect to offenses committed within the territory of Japan and punishable by the law of Japan.

(b) the military authorities of the United States shall have the right to exercise within Japan all criminal and disciplinary jurisdiction conferred on them by the law of the United States over all persons subject to the military law of the United States;

2. (a) The authorities of Japan shall have the right to exercise exclusive jurisdiction over members of the United States armed forces or of the civilian component thereof and their dependents with respect to offenses, including offenses relating to the security of Japan, punishable by its law but not by the law of the United States.

(b)

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

(b) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offenses, including offenses relating to its security, punishable by the law of the United States, but not by the law of Japan.

(c) For the purposes of this paragraph and of paragraph 3 of this Article a security offense against a State shall include

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defense of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(a) The military authorities of the United States shall have the primary right to exercise jurisdiction over a member of the United States armed forces or of the civilian component thereof in relation to

(i)

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

(i) offenses solely against the property or security of the United States, or offenses solely against the person or property of another member of the United States armed forces or of the civilian component thereof or a dependent;

(ii) offenses arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offense the authorities of Japan shall have the primary right to exercise jurisdiction.

(c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the United States to exercise jurisdiction

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

jurisdiction over persons who are nationals of or ordinarily resident in Japan, unless they are members of the United States armed forces.

5. (a) The authorities of Japan and the military authorities of the United States shall assist each other in the arrest of members of the United States armed forces or of the civilian component thereof or their dependents in the territory of Japan and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of Japan shall notify promptly the military authorities of the United States of the arrest of any member of the United States armed forces or of the civilian component thereof or a dependent.

(c) The custody of a suspect member of the United States armed forces or of the civilian component thereof over whom Japan is to exercise jurisdiction shall, if he is in the hands of the United States, remain with the United States until he is charged by Japan.

6. (a) The authorities of Japan and the military authorities of the United States shall assist each other in the carrying out of all necessary

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(b) The authorities of Japan and the military authorities of the United States shall notify each other of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7. (a) A death sentence shall not be carried out in Japan by the military authorities of the United States if the legislation of Japan does not provide for such punishment in a similar case.

(b) The authorities of Japan shall give sympathetic consideration to a request from the military authorities of the United States for assistance in carrying out a sentence of imprisonment pronounced by the military authorities of the United States under the provisions of this Article within the territory of Japan.

8. Where an accused has been tried in accordance with the provisions of

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

of this Article either by the authorities of Japan or by the military authorities of the United States and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offense within the territory of Japan by the authorities of the other State. However, nothing in this paragraph shall prevent the military authorities of the United States from trying a member of its armed forces for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of Japan.

9. Whenever a member of the United States armed forces or of the civilian component thereof or a dependent is prosecuted under the jurisdiction of Japan he shall be entitled:

(a) to a prompt and speedy trial;

(b) to be informed, in advance of trial, of the specific charge or charges made against him;

(c) to be confronted with the witnesses against him;

(d) to have compulsory process for obtaining witnesses in his favour,

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

- 8 -

forces, if they are within the jurisdiction of Japan;

(e) to have the assistance of his own choice for his defence or to have free or assigned counsel under the conditions prevailing for the time being in Japan;

(f) if he considers it necessary, to have the services of a competent interpreter; and

(g) to communicate with a representative of the government of the United States and, when the rules of the court permit, to have such a representative present at his trial.

10. (a) Regularly constituted military units or formations of the United States armed forces shall have the right to police any facilities or areas which they use under Article 2 of this Agreement. The military police of such forces may take all appropriate measures to ensure the maintenance of order and security within such facilities and areas.

(b) Outside these facilities and areas, such military police shall be employed only subject to arrangements with the authorities of Japan and in liaison with those authorities, and in so far as such employment

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

employment is necessary to maintain discipline and order among the members of the United States armed forces.

add paragraph 11

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

The present Protocol shall come into effect on the date of the entry into force with respect to the United States of America of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces.

In witness thereof the representatives of the two Governments, duly authorized for the purpose, have signed the present Protocol.

Done at Tokyo, in duplicate, in the Japanese and English languages, both texts being equally authentic, this of , 1953.

For the Government of Japan:

For the Government of the United States of America:

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

CONFIDENTIAL

Official Agreed Minutes regarding Protocol to Amend Article XVII of the Administrative Agreement between Japan and the United States of America

RE paragraph 1 (b) and paragraph 2(b):

The scope of persons subject to the military law of the United States shall be communicated, through the Joint Committee, to the Government of Japan by the Government of the United States.

RE paragraph 2(c):

Both Governments shall inform each other of the details of all the security offenses mentioned in this subparagraph and the provisions covering such offenses in the existing laws of their respective countries.

RE paragraph 3(c):

1. Request for waiver of the primary right to exercise jurisdiction shall be made through the Joint Committee;

2. Cases over which the Japanese authorities have waived primary jurisdiction and cases involving offenses of paragraph 3(a) (ii) committed against the State or nationals of Japan shall be tried in Japan by a competent military tribunal of the United States if so requested by the Japanese authorities;

3.

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

3. Such trials shall be held promptly within a reasonable distance from the places where the offenses are alleged to have taken place and the representatives of the Japanese authorities may be present at such trials.

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

from the U.S. of State

Confidential

(Translation)

April 14, 1953.

Monsieur l'Ambassadeur,

As Your Excellency is aware, paragraph 1, of Article XVII of the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America stipulates that "Upon the coming into force with respect to the United States of the "Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces", signed at London on June 19, 1951, the United States will immediately conclude with Japan, at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that Agreement", and paragraph 5. of the said Article stipulates, inter alia, that "In the event

His Excellency
Mr. Robert Murphy,
Ambassador Extraordinary and Plenipotentiary
of the United States of America,
T o k y o.

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

the said North Atlantic Treaty Agreement has not come into effect within one year from the effective date of this Agreement, the United States will, at the request of the Japanese Government, reconsider the subject of jurisdiction over offenses committed in Japan by members of the United States armed forces, the civilian component and their dependents."

In view of the progress of the deliberations in the Senate of the United States of the North Atlantic Treaty Agreement, I have the honour to notify Your Excellency that the Government of Japan is desirous of concluding with the Government of the United States, by virtue of the provisions of paragraph 1. of the said Article XVII, an agreement on criminal jurisdiction similar to the corresponding provisions of the North Atlantic Treaty Agreement immediately upon its coming into force with respect to the United States. I wish this note to be regarded, in due course of time, as the notification to the Government of the United

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8

States of such option of Japan to conclude a new agreement as is mentioned in the said paragraph 1. The draft of such an agreement that Japan proposes to conclude is attached hereto.

I wish further to inform Your Excellency that if the entry into force of the North Atlantic Treaty Agreement with respect to the United States should be delayed, the Government of Japan, by virtue of the provisions of paragraph 5, of Article XVII of the Administrative Agreement, would request the Government of the United States to reconsider the subject of criminal jurisdiction with a view to revising the said Article.

2. I should like to take this opportunity to clarify the position of the Government of Japan regarding the revision of other provisions of the Administrative Agreement, stating that it may, in due time, take steps as it deems necessary in accordance with the provisions of Article XXVIII of the Agreement.

I avail myself of this occasion to renew to Your Excellency, Monsieur l'Ambassadeur, the assurance of my highest consideration.

Minister for Foreign Affairs.

Approved For Release 2007/01/21 : CIA-RDP58-00453R000100010041-8